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11 Attorneys for Defendant  
GOOGLE INC.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,  
16 Plaintiffs,  
17 v.  
18 GOOGLE INC.,  
19 Defendant.

Case No. CV 10-03561 WHA

**DEFENDANT GOOGLE INC.'S  
RESPONSE TO TENTATIVE TRIAL  
PLAN (DKT. NO. 1488)**

Dept.: Courtroom 8, 19<sup>th</sup> Fl.  
Judge: Hon. William Alsup

1 Pursuant to the Court's request, Defendant Google Inc. ("Google") respectfully submits  
2 the following comments concerning the Tentative Trial Plan dated February 8, 2016 (Docket No.  
3 1488).

4 Google largely concurs with the Court's proposed trial plan. However, Google requests  
5 the Court's advance permission (as noted on page 2, line 5 of the Tentative Trial Plan) to have  
6 one of its six pretrial motions *in limine* consist of a *Daubert* motion presented in 20 pages of  
7 briefing, as opposed to the standard 10 pages. Specifically, Google submits that it requires these  
8 additional pages for its *Daubert* motion challenging the expert opinion testimony of Oracle's  
9 damages expert, James Malackowski. Mr. Malackowski has presented a lengthy opening  
10 damages expert report that totals 238 pages including exhibits. In that report, Mr. Malackowski  
11 offers opinions that seek to support Oracle's claim for disproportionately large damages, but he  
12 does so without providing the analysis required under governing law. For example, in his attempt  
13 to support Oracle's bid to help itself to Google's indirect advertising revenues, Mr. Malackowski  
14 fails to establish the required causal nexus between those revenues and any use of the allegedly  
15 infringed 37 Java APIs. And, in seeking to support an award to Oracle of lost license profits,  
16 Mr. Malackowski fails to tie those supposed losses to the allegedly infringed 37 Java APIs,  
17 impermissibly basing the claim entirely on a misreading of an already speculative Sun profit  
18 projection. In order to provide a complete discussion of the support for this *Daubert* motion  
19 directed to Mr. Malackowski's lengthy proposed testimony, Google respectfully requests 20  
20 pages to brief that motion.

21 Google further states that (a) it does not oppose the inclusion of the Marshmallow version  
22 of the Android Open Source Platform on the list of Android versions in play per the Court's  
23 comments at page 2, lines 20 to 22, of the Tentative Trial Plan; and (b) the parties agree that a  
24 juror questionnaire would be helpful in this case. The parties are jointly working on a proposed  
25 jury questionnaire and will submit any mutually agreed-upon version for the Court's  
26 consideration by Friday, February 19.

1 Dated: February 16, 2016

KEKER & VAN NEST LLP

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3 By: /s/ Robert A. Van Nest  
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